

May 16, 2006

**VIA FEDERAL EXPRESS**

162838



Joshua Gradwohl, Supervisor  
Bureau of Risk Management, Initial Notice & Case Assignment  
**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**  
P.O. Box 435  
401 East State Street, 5<sup>th</sup> Floor  
Trenton, New Jersey 08625-0435

Re: **ISRA Remediation In Progress Waiver Application and  
General Information Notice for:  
SHIELDALLOY METALLURGICAL CORPORATION**  
35 South West Boulevard (formerly 12 West Boulevard)  
Borough of Newfield, Gloucester County, New Jersey 08344  
(Block 209, Lots 2 and 7 and Block 1002, Lots 1, 2, 3, 3.01, 4, 5,  
15, 15.01, 16 and 18 on the Tax Map of the Borough of Newfield,  
Gloucester County, and Block 83, Lot 13-1 and Block 84, Lots 4-1  
and 5 on the Tax Map of the City of Vineland, Cumberland County)

Dear Mr. Gradwohl:

Our client is Shieldalloy Metallurgical Corporation ("SMC"), owner and operator of property located at 35 South West Boulevard (formerly 12 West Boulevard), Newfield, New Jersey 08344. The property is located partly in the Borough of Newfield, Gloucester County (Block 209, Lots 2 and 7 and Block 1002, Lots 1, 2, 3, 3.01, 4, 5, 15, 15.01, 16 and 18 on the Tax Map of the Borough of Newfield) and partly in the City of Vineland, Cumberland County (Block 83, Lot 13-1 and Block 84, Lots 4-1 and 5 on the Tax Map of the City of Vineland, Cumberland County) (the "Site").

SMC submits the attached Industrial Site Recovery Act ("ISRA") Remediation In Progress Waiver Application ("Waiver Application") and a General Information Notice ("GIN") in anticipation of the cessation of operations at the Site on June 30, 2006. Public notice of the cessation was first issued on May 15, 2006 (see Attachment C to GIN).

Additionally, please find attached a completed Initial Notice Fee Submittal Form, along with an administrative fee check for \$250.00 to cover the costs of your review of the Waiver Application and the GIN.

Currently the entire Site is subject to remedial activities under a February 1, 2006 Administrative Consent Order with the New Jersey Department of Environmental Protection ("NJDEP" or "Department") entitled in the Matter of the Shieldalloy Metallurgical Corporation Site and Shieldalloy Metallurgical Corporation and TRC

*Law Offices*

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Suite 300

P.O. Box 627

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CHICAGO

FLORHAM PARK

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Jonathan I. Epstein,

Partner responsible for

Princeton Office

*Established*  
1849

Joshua Gradwohl  
May 16, 2006  
Page 2

Companies, Inc., Public Interest No. 000297 ("ACO"). A copy of the ACO is attached to the GIN as Exhibit E and the Waiver Application as Exhibit B.

Paragraph 16 of the ACO provides as follows:

*Shieldalloy's and TRC's compliance with the requirements of this Administrative Consent Order shall satisfy the remedial requirements of the Industrial Site Recovery Act.* Should there be a triggering event at the Site, Shieldalloy shall follow the administrative requirements of Act. The Department's notification under paragraph 84 of this Administrative Consent Order, namely that the obligations of this Administrative Consent Order are completed, shall also signify that the ISRA requirements have been met. [Emphasis added.]

Consequently, the ACO provides that compliance with its terms constitutes a remediation in progress for purposes of ISRA. Also, Paragraphs 59 through 61 provide for the establishment and maintenance of a remediation funding source to carry out the requirements of the ACO.

Note that there is one error in the ACO, which SMC intends to ask the NJDEP to correct as soon as possible. In the course of preparing the GIN, Shieldalloy discovered that one of the Vineland parcels is incorrectly listed in the ACO as Block 8, Lot 13-1, when it is actually Block 83, Lot 13-1. The correct block number is contained in the GIN and the Waiver Application. (See Attachment A to each document.) I trust that this will not have bearing on the NJDEP's acceptance of the GIN and approval of the Waiver Application, but please advise immediately if it presents any problem.

Note, also, that SMC is exploring the issue of whether the parcel properly identified as Block 83, Lot 13-1, is even subject to ISRA. It is our understanding that this lot is farm property that SMC purchased in 1988 to install monitoring wells and an extraction / pumping well located downgradient from the SMC industrial / plant site. It is not believed that any industrial operations ever occurred on this parcel, and as can be seen from the Tax Map provided as Attachment C to the GIN, the lot is not contiguous to the industrial/ plant site. Consequently, to the extent SMC may wish to seek a non-applicability determination as to this parcel, it will do so within the next week. However, for now, and until further notice, the parcel should be considered as included in the GIN and Waiver Application.

For important business reasons, SMC needs to obtain the NJDEP's approval of the attached ISRA Waiver Application on or before **June 15, 2006**. I will give you a call in the next several days to discuss the timing of the Department's review of the

Joshua Gradwohl

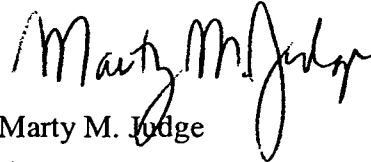
May 16, 2006

Page 3

attached ISRA Waiver Application. Please do not hesitate to contact me directly with any questions.

As always, thank you in advance for your assistance and cooperation in this matter.

Very truly yours,



Marty M. Judge

Attachments and Check Enclosed

Cc/encls.: Eric E. Jackson, Shieldalloy Metallurgical Corporation  
Pamela J. Bradway, Shieldalloy Metallurgical Corporation  
Joseph T. Diegel, Shieldalloy Metallurgical Corporation  
David R. Smith, Shieldalloy Metallurgical Corporation

1/2005

Division of Responsible Party Site Remediation  
Industrial Site Recovery Act

INITIAL NOTICE FEE SUBMITTAL FORM

Case # (if known) \_\_\_\_\_

Case Name (Active Case) Shieldalloy Metallurgical Corporation

Check drawn from the account of Drinker Biddle & Reath LLP Check/M.O. # 23731

Amount Enclosed \$250.00

Please circle the appropriate payment location(s)

1.	General Information Notice	\$100.00✓
2.	Preliminary Assessment Report	\$250.00
3.	Site Investigation Report	\$500.00
4.	Negative Declaration Review	\$100.00
5.	Expedited Review Application	\$150.00 (see note)
	Note: This fee is not intended to "expedite" the review of a Preliminary Assessment or Site Investigation Report. All reports are reviewed in the order received by the department.	
6.	Remediation in Progress Waiver Application	\$150.00✓
7.	Regulated Underground Storage Tank Waiver Application	\$400.00
8.	Area of Concern Waiver Application	\$100.00
9.	Limited Site Review Application	\$350.00
10.	Applicability Determination Application	\$200.00
11.	De Minimis Quantity Exemption Application	\$200.00
12.	Limited Conveyance Application	\$400.00
13.	Remediation Agreement Application	\$1,000.00
	Remediation Agreement Amendment Application	\$500.00
14.	Confidentiality Claim	\$250.00
15.	Remedial Action Workplan Deferral Application	\$650.00

Note: All applicable fees are due with the submission of each document. Each document requires a separate review fee. Review fees are for a single review. The submission of a revised document in response to deficient submission will require a separate review fee. Fees are not transferable or refundable once a requested review has been completed or written a determination has been made by the Department.

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER - SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES

DRINKER BIDDLE & REATH LLP  
A PENNSYLVANIA LIMITED LIABILITY PARTNERSHIP  
105 COLLEGE ROAD EAST, P.O. BOX 827  
PRINCETON, NJ 08542-0827

BROWN BROTHERS HARRIMAN & CO  
PRIVATE BANKERS  
1531 WALNUT STREET, PHILADELPHIA, PA  
480/280

23731

05-16-06

PAY TO THE ORDER OF TREASURER, STATE OF NEW JERSEY \$ 250.00

TWO HUNDRED FIFTY AND 00/100 DOLLARS

ATTORNEY BUSINESS ACCOUNT  
VOID AFTER 6 MONTHS

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

023731 026004802 3485638

DRINKER BIDDLE & REATH LLP / A PENNSYLVANIA LIMITED LIABILITY PARTNERSHIP

TREASURER, STATE OF NEW JERSEY

05-16-06

23731

250.00

Amount

Ref. # Inv. # Description

512624 0004993

250.00

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF FIELD OPERATIONS-ISRA INITIAL NOTICE  
P.O. BOX 435  
401 EAST STATE STREET  
TRENTON, NJ 08625-0435

INDUSTRIAL SITE RECOVERY ACT

REMEDIATION IN PROGRESS WAIVER APPLICATION

The purpose of this Affidavit is to obtain the New Jersey Department of Environmental Protection's approval of a remediation in progress waiver pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-11.5 and N.J.A.C. 7:26B-5.4. The Department may require the applicant to submit additional documentation to support the applicant's certifications contained in this application.

PLEASE TYPE OR PRINT

Date May 15, 2006

1. Industrial Establishment

Name Shieldalloy Metallurgical Corporation

Street Address 35 South West Boulevard

Municipality Newfield County Gloucester

Tax Block(s) See Attachment A. Tax Lot(s) See Attachment A.

2. Has a General Information Notice (GIN) been filed for this transaction?

If yes, ISRA Case Number \_\_\_\_\_

If no, attach a completed GIN to this application. See attached GIN dated May 15, 2006.

3. The industrial establishment listed in item 1 above is currently subject to a remediation conducted pursuant to:

ISRA: Case Number N/A

Other: Identify state or federal program overseeing remediation. List all relevant case identifiers.

See Attachment B, consisting of February 1, 2006 NJDEP Administrative Consent Order entitled In the Matter of the Shieldalloy Metallurgical Corporation Site and Shieldalloy Metallurgical Corporation and TRC Companies, Inc., Public Interest No. 000297. In particular, see Paragraph 16 of the attached ACO which provides as follows:

*Shieldalloy's and TRC's compliance with the requirements of this Administrative Consent Order shall satisfy the remedial requirements of the Industrial Site Recovery Act. Should there be a triggering event at the Site, Shieldalloy shall follow the administrative requirements of Act. The Department's notification under paragraph 84 of this Administrative Consent Order, namely that the obligations of this Administrative Consent Order are completed, shall also signify that the ISRA requirements have been met. [Emphasis added.]*

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4. I hereby state that a preliminary assessment report and a site investigation report, as applicable, have been completed at the industrial establishment listed above in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and N/A

Based on the preliminary assessment report and site investigation report as applicable, (check the appropriate statement) N/A

- ☐ There has been no discharge of a hazardous substance or hazardous waste at the industrial establishment during my ownership or operation of the industrial establishment identified in item 1 above; or
- ☐ A discharge of a hazardous substance or hazardous waste at the industrial establishment has occurred during my ownership or operation. The remediation of the discharge was performed in accordance with N.J.A.C. 7:26E and was approved by the Department as evidenced by the attached no further action letter, or equivalent approval. And; as a result of the remediation of the discharges which occurred during my ownership or operation no levels of contamination remain at the industrial establishment related to my ownership or operations which exceed the current applicable criteria by more than an order of magnitude;

5. As applicable, the transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation as referenced in item 3 above, as evidenced by the attached letter and receipt acknowledging the transferee's notification. N/A

6. A remediation funding source for the cost of the implementation of a remedial action workplan at the industrial establishment identified in item 1 above, has been established as required pursuant to N.J.S.A. 58:10B-3. (The owner or operator may certify that the financial assurance is consistent with the current cost estimate developed in accordance with N.J.A.C. 7:26E, for the remediation or the implementation of the remedial action workplan at the industrial establishment.) Yes. See Paragraphs 59 through 61 of attached (Attachment B) February 1, 2006 NJDEP Administrative Consent Order entitled In the Matter of the Shieldalloy Metallurgical Corporation Site and Shieldalloy Metallurgical Corporation and TRC Companies, Inc., Public Interest No. 000297.



**CERTIFICATION:**

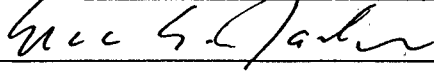
The following certification shall be signed pursuant to the requirements of N.J.A.C. 7:26B-1.6(e).

*I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13.*

Typed/Printed Name Eric E. Jackson

Title President

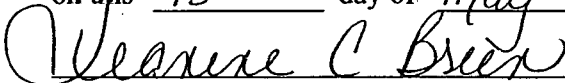
Signature



Date May 15, 2006

Sworn to and Subscribed Before Me

on this 15 day of May 2006



Notary

**Attachment A**  
**Block and Lot Description**

The Site is located partly in the Borough of Newfield, Gloucester County, and partly in the City of Vineland, Cumberland County. The tax map references are as follows:

Newfield      Block 209, Lots 2 and 7 and Block 1002, Lots 1, 2, 3, 3.01, 4, 5, 15, 15.01, 16 and 18.

Vineland      Block 83, Lot 13-1\* and Block 84, Lots 4-1 and 5.

\* Note that the correct identification for this parcel is Block 83 (not Block 8), Lot 13-1, in the City of Vineland. This can be seen from the Tax Map for the City of Vineland provided as part of Attachment C to the General Information Notice (GIN). The parcel is incorrectly identified as Block 8, Lot 13-1, in the February 1, 1006 ACO provided as Attachment B. This error in the ACO was discovered by SMC during the course of preparing the GIN, and SMC will be seeking amendment to the ACO to correct the error as soon as possible.

**Attachment B**

**February 1, 2006 NJDEP Administrative Consent Order entitled In the Matter of the  
Shieldalloy Metallurgical Corporation Site and Shieldalloy Metallurgical Corporation and  
TRC Companies, Inc., Public Interest No. 000297.**



# State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE  
Governor

LISA P. JACKSON  
Acting Commissioner

PI # 000297

IN THE MATTER OF THE  
SHIELDALLOY METALLURGICAL  
CORPORATION SITE  
AND  
SHIELDALLOY METALLURGICAL  
CORPORATION and  
TRC COMPANIES, INC.  
Respondents

ADMINISTRATIVE CONSENT

ORDER

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 through -19, the Solid Waste Management Act, N.J.S.A. 13:1E-1 through -91, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director, Division of Remediation Support, Oversight Resources Allocation Element, pursuant to N.J.S.A. 13:1B-4.

## FINDINGS

1. The Shieldalloy Metallurgical Corporation Site is located at 12 West Boulevard, also known as including Block 209, Lots 2 and 7 and Block 1002, Lots 1, 2, 3, 3.01, 4, 5, 15, 15.01, 16 and 18 on the tax maps of the Borough of Newfield, Gloucester County, and Block 8, Lot 13-1 and Block 84, Lots 4-1 and 5 on the tax maps of the City of Vineland, Cumberland County (hereinafter "the site") and is the subject of this Administrative Consent Order.

2. Since 1951, Shieldalloy Metallurgical Corporation (hereinafter "Shieldalloy"), has owned and operated a chromium alloy and specialty alloy manufacturing facility at the Site.

3. Shieldalloy is a Delaware Corporation with its corporate offices located at 545 Beckett Road, Suite 201, Swedesboro, New Jersey and is a party executing this Administrative Consent Order.

4. TRC Companies, Inc. (hereinafter "TRC") is a Delaware Corporation, with its corporate offices located at 21 Griffin Road North, Windsor, Connecticut, and is a party executing this Administrative Consent Order.

5. On October 5, 1988 the Department entered into an Administrative Consent Order with Shieldalloy for the remedial investigation and cleanup of the Site. The Administrative Consent Order was amended on August 31, 1989 and again on September 11, 1992. These documents are herein incorporated by reference into this document.

6. As required by the March 26, 1997 Bankruptcy Settlement, Shieldalloy currently has a Letter of Credit in the amount of \$4,250,000.00 established as a security for the "NRC Slag Remediation" environmental project to be completed at the Site. This ACO in no way affects the requirement to maintain this financial assurance.

7. This Administrative Consent Order shall serve to add TRC as a signatory to this Administrative Consent Order and to define the remedial work that will be conducted by each party.

8. By entering this Administrative Consent Order, neither Shieldalloy nor TRC admit to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this Administrative Consent Order.

9. This Administrative Consent Order is, to the greatest extent possible, consistent with and complies with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601, et seq., and the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 C.F.R. §300.1, et seq. All activities undertaken by Shieldalloy and TRC pursuant to this Administrative Consent Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted pursuant to this Administrative Consent Order, if approved by the Department, shall be considered to be consistent with the NCP.

10. The scope of the investigation and remediation required by this Administrative Consent Order will include all contaminants at the above referenced Site, and all contaminants, which are emanating from or which have emanated from the Site except as excluded herein.

#### ORDER

11. Contamination is known to exist at and emanating from the site, including but not limited to soil contamination with radioactive material and perchlorate contamination in the groundwater. The radioactive material is regulated by the Nuclear Regulatory Commission, and Shieldalloy is required to remediate that radioactive contamination pursuant to its Nuclear Regulatory Commission Source Material License, SMB-743. New Jersey also regulates radioactive material pursuant to the Radiation Protection Act, N.J.S.A. 26:2D and the implementing regulations, including but not limited to the Soil Remediation Standards for Radioactive Material, N.J.A.C. 7:28-12, and reserves any rights it may have with respect to the radioactive materials at the Site. The Department asserts that perchlorate is a pollutant pursuant to the New Jersey Water Pollution Control Act.

Shieldalloy is required to remediate the perchlorate contamination at and emanating from the site. TRC will have no obligation for such remediation.

12. Shieldalloy herein agrees to conduct all remedial activities necessary to address the radioactive and perchlorate contamination at and/or emanating from the site, and TRC shall have no responsibility for such remediation.

13. Shieldalloy is required to remediate the perchlorate contamination in the ground water at and emanating from the Site to an action level of 5 ppb. If, a different regulatory standard for perchlorate is adopted, and the codified concentration limit for ground water is higher than 5 ppb, then Shieldalloy shall remediate the perchlorate contamination to that different regulatory standard.

14. TRC herein agrees to conduct all remedial activities necessary to address all contaminants not including the radioactive contamination and/or perchlorate contamination at and/or emanating from the site.

15. Should TRC fail to conduct and/or complete remediation activities at the Site, upon notification from the Department Shieldalloy shall conduct all remaining remedial work as required by the Department.

#### I. Industrial Site Recovery Act Requirements

16. Shieldalloy's and TRC's compliance with the requirements of this Administrative Consent Order shall satisfy the remedial requirements of the Industrial Site Recovery Act. Should there be a triggering event at the Site, Shieldalloy shall follow the administrative requirements of Act. The Department's notification under paragraph 84 of this Administrative Consent Order, namely that the obligations of this Administrative Consent Order are completed, shall also signify that the ISRA requirements have been met.

#### II. Remedial Investigation of Perchlorate

17. Within sixty (60) calendar days after the effective date of this Administrative Consent Order or as otherwise approved in writing by the Department, Shieldalloy agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E to address the perchlorate contamination.

18. Within thirty (30) calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the RI Work Plan to conform to the Department's comments and agrees to submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

19. Upon receipt of the Department's written final approval of the RI Work Plan, Shieldalloy agrees to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

20. Shieldalloy agrees to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.

21. If upon review of the RI Report the Department determines that additional remedial investigation is required, Shieldalloy agrees to conduct additional remedial investigation as required by the Department including submission of another RI Workplan and schedule, and submit another RI Report.

22. Within thirty (30) calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, Shieldalloy agrees to modify the RI Report to conform to the Department's comments and agrees to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

23. Within sixty (60) calendar days after receipt of the Department's written final approval of the RI Report or as otherwise approved in writing by the Department, Shieldalloy agrees to submit to the Department a Feasibility Study (hereinafter the "FS Report") to address the perchlorate contamination.

24. Within thirty (30) calendar days after receipt of the Department's written comments on the FS Report, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the FS Report to conform to the Department's comments and agrees to submit a modified FS Report to the Department. The determination as to whether or not the modified FS Report, as resubmitted, conforms the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

### III. Remedial Action for Perchlorate

25. Within sixty (60) calendar days after the signing of a Record of Decision for the Perchlorate Plume Operable Unit (hereinafter "OU1-Perchlorate"), or as otherwise approved in writing by the Department, Shieldalloy agrees to submit to the Department a Draft Final Remedial Design Report for OU1-Perchlorate, including an implementation schedule.

26. Within thirty (30) calendar days after receipt of the Department's written comments on the Draft Final Design Report for OU1-Perchlorate, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the Draft Final Design Report for OU1-Perchlorate to conform to the Department's comments and agrees to submit a Final Design

Report for OU1-Perchlorate to the Department. The determination as to whether or not the Final Design Report for OU1-Perchlorate, as submitted, conforms to the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

27. Upon receipt of the Department's written final approval of the Final Design Report for OU1-Perchlorate, Shieldalloy agrees to implement the approved Final Design Report for OU1-Perchlorate in accordance with the schedule therein.

28. Within thirty (30) calendar days after receipt of the Department's written approval of the Final Design Report for OU1-Perchlorate, Shieldalloy agrees to submit to the Department a Remedial Action Work Plan for OU1-Perchlorate in accordance with N.J.A.C. C. 7:26E, including an implementation schedule.

29. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Work Plan for OU1-Perchlorate, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the Remedial Action Work Plan for OU1-Perchlorate to conform to the Department's comments and agree to submit the modified Remedial Action Work Plan for OU1-Perchlorate to the Department. The determination as to whether or not the modified Remedial Action Work Plan for OU1-Perchlorate, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

30. Upon receipt of the Department's written final approval of the Remedial Action Work Plan for OU1-Perchlorate, Shieldalloy agrees to implement the approved Remedial Action Work Plan for OU1-Perchlorate in accordance with the schedule therein.

31. Shieldalloy agrees to submit to the Department a Remedial Action Report for OU1-Perchlorate in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan for OU1-Perchlorate and the schedule therein.

32. If upon review of the Remedial Action Report for OU1-Perchlorate the Department determines that additional remediation is required, Shieldalloy agrees to conduct additional remediation as directed by the Department and agrees to submit subsequent RI Reports and Remedial Action Reports, as applicable.

33. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Report for OU1-Perchlorate, or longer as authorized by the Department, Shieldalloy agrees to modify the Remedial Action Report for OU1-Perchlorate to conform with the Department's comments and agrees to submit the modified Remedial Action Report for OU1-Perchlorate to the Department. The determination as to whether or not the modified Remedial Action Report for OU1-Perchlorate, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.



#### IV. Remedial Action for OU1

34. Within 180 calendar days after the effective date of this Administrative Consent Order or as otherwise approved in writing by the Department, TRC agrees to submit to the Department a Draft Final Design Report for the Ground Water Operable Unit (hereinafter "OU1"). The Draft Final Design Report for OU1 shall provide the details for the implementation of the Selected Remedy documented in the Record of Decision for OU1 dated September 24, 1996, including an implementation schedule.

35. Within thirty (30) calendar days after receipt of the Department's written comments on the Draft Final Design Report for OU1, or as otherwise approved in writing by the Department, TRC agree to modify the Draft Final Design Report for OU1 to conform to the Department's comments and agrees to submit a Final Design Report for OU1 to the Department. The determination as to whether or not the Final Design Report for OU1, as submitted, conforms to the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

36. Upon receipt of the Department's written final approval of the Final Design Report for OU1, TRC agrees to implement the approved Final Design Report for OU1 in accordance with the schedule therein.

37. Within thirty (30) calendar days after receipt of the Department's written approval of the Final Design Report for OU1, TRC agrees to submit to the Department a Remedial Action Work Plan for OU1 in accordance with N.J.A.C. 7:26E, including an implementation schedule.

38. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Work Plan for OU1, or as otherwise approved in writing by the Department, TRC agree to modify the Remedial Action Work Plan for OU1 to conform to the Department's comments and agree to submit the modified Remedial Action Work Plan for OU1 to the Department. The determination as to whether or not the modified Remedial Action Work Plan for OU1, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Department's written comments and is otherwise acceptable to the Department, shall be made solely by the Department in writing.

39. Upon receipt of the Department's written final approval of the Remedial Action Work Plan for OU1, TRC agrees to implement the approved Remedial Action Work Plan for OU1 in accordance with the schedule therein.

40. TRC agrees to submit to the Department a Remedial Action Report for OU1 in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan for OU1 and the schedule therein.

41. If upon review of the Remedial Action Report the Department determines that additional remediation is required, Shieldalloy and TRC agree to conduct additional

remediation as directed by the Department and agree to submit subsequent RI Reports and Remedial Action Reports, as applicable.

42. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Report for OU1, or longer as authorized by the Department, TRC agrees to modify the Remedial Action Report for OU1 to conform with the Department's comments and agrees to submit the modified Remedial Action Report for OU1 to the Department. The determination as to whether or not the modified Remedial Action Report for OU1, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

#### V. Soil, Surface Water and Sediment

43. Within sixty (60) calendar days after the signing of a Record of Decision for the Soil, Surface Water and Sediment Operable Unit (hereinafter "OU2"), or as otherwise approved in writing by the Department, TRC agrees to submit to the Department a Draft Final Remedial Design Report for OU2, including an implementation schedule. TRC shall incorporate the requirements of the Scope of Work for Natural Resource Restoration Plan dated June 24, 1996 into the Draft Final Remedial Design Report for OU2.

44. Within thirty (30) calendar days after receipt of the Department's written comments on the Draft Final Design Report for OU2, or as otherwise approved in writing by the Department, TRC agrees to modify the Draft Final Design Report for OU2 to conform to the Department's comments and agrees to submit a Final Design Report for OU2 to the Department. The determination as to whether or not the Final Design Report for OU2, as submitted, conforms to the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

45. Upon receipt of the Department's written final approval of the Final Design Report for OU2, TRC agrees to implement the approved Final Design Report for OU2 in accordance with the schedule therein.

46. Within thirty (30) calendar days after receipt of the Department's written approval of the Final Design Report for OU2, TRC agrees to submit to the Department a Remedial Action Work Plan for OU2 in accordance with N.J.A.C. 7:26E, including an implementation schedule.

47. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Work Plan for OU2, or as otherwise approved in writing by the Department, TRC agrees to modify the Remedial Action Work Plan for OU2 to conform to the Department's comments and agree to submit the modified Remedial Action Work Plan for OU2 to the Department. The determination as to whether or not the modified Remedial Action Work Plan for OU2, as resubmitted, conforms to the Technical Requirements for

Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

48. Upon receipt of the Department's written final approval of the Remedial Action Work Plan for OU2, TRC agrees to implement the approved Remedial Action Work Plan for OU2 in accordance with the schedule therein.

49. TRC agrees to submit to the Department a Remedial Action Report for OU2 in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan for OU2 and the schedule therein.

50. If upon review of the Remedial Action Report for OU2 the Department determines that additional remediation is required, TRC agrees to conduct additional remediation as directed by the Department and agrees to submit subsequent RI Reports and Remedial Action Reports, as applicable.

51. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Report for OU2, or longer as authorized by the Department, TRC agrees to modify the Remedial Action Report for OU2 to conform with the Department's comments and agrees to submit the modified Remedial Action Report for OU2 to the Department. The determination as to whether or not the modified Remedial Action Report for OU2, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

#### IV. Additional Remedial Investigation and Remedial Action

52. If at any time that this Administrative Consent Order is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety and the environment, TRC agrees to conduct such additional remediation as the Department directs.

#### V. Progress Reports

53. Shieldalloy and TRC agree to submit quarterly progress reports which detail the status of Shieldalloy and TRC's compliance with this Administrative Consent Order to the Department in accordance with N.J.A.C. 7:26E-6.6(b). Shieldalloy and TRC agree to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Administrative Consent Order. Shieldalloy and TRC agree to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. Shieldalloy and TRC may request that the Department allow progress reports be submitted semi-annually or annually.

## VI. Project Coordination

54. Shieldalloy and TRC agree to submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine Shieldalloy's and TRC's compliance with the requirements of this Administrative Consent Order and the applicability of penalties and any other remedies available to the Department.

55. Within seven (7) calendar days after the effective date of this Administrative Consent Order, Shieldalloy and TRC agree to submit to the Department the name, title, address and telephone number of the individual who shall be their technical contact for the Department for all matters concerning this Administrative Consent Order and Shieldalloy and TRC agree that this person is therefore determined to be Shieldalloy's and TRC's agent for the purpose of service for all matters concerning this Administrative Consent Order. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to this agent of the date, time and place of such meeting. Shieldalloy and TRC agree to ensure that the agent is available for and participates in such meeting.

56. Within seven (7) days after the effective date of this Administrative Consent Order the Department will identify the individual who will be the Department's contact for all matters concerning this Administrative Consent Order. Unless the Department otherwise directs in writing, Shieldalloy and TRC agree to submit all payments and copies of all documents required by this Administrative Consent Order to the Department's contact.

57. Shieldalloy and TRC agree to notify, both verbally and in writing, the Department's contact person identified pursuant to Paragraph 55, above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

58. The Department will consider a written request for an extension of time to perform any requirement in this Administrative Consent Order, provided that Shieldalloy and TRC submit any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

## VII. Remediation Funding Source and Remediation Funding Source Surcharge

59. Shieldalloy and TRC agree to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the Site, pursuant to N.J.A.C. 7:26C-7. Shieldalloy and TRC agree that the initial remediation funding source amount is \$ 13,500,000.00.

60. Shieldalloy agrees to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order specifically for the remediation of perchlorate contamination, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the perchlorate, pursuant to N.J.A.C. 7:26C-7. Shieldalloy agrees that the initial remediation funding source amount for perchlorate is \$ 600,000.00.

61. Shieldalloy and TRC agree to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

#### VIII. Project Cost Review

62. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, and annually thereafter on the same calendar day, Shieldalloy and TRC agree to submit to the Department a detailed review of all remediation costs expended by Shieldalloy and TRC to comply with this Administrative Consent Order including:

- a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;
- b) The detailed estimated remediation costs required to comply with this Administrative Consent Order, including all operation, maintenance and monitoring costs; and
- c) The reason for any changes from the previously submitted cost review.

63. At any time after Shieldalloy and TRC submit the first cost review pursuant to the preceding paragraph Shieldalloy and TRC may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Administrative Consent Order. If the Department grants written approval to such a request, Shieldalloy and TRC may amend the amount of the then existing remediation funding source consistent with that approval.

64. If the estimated costs of meeting Shieldalloy and TRC's obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source, Shieldalloy and TRC agree to within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

65. If Shieldalloy and TRC implement a remedial action at the site that includes institutional and/or engineering controls pursuant to N.J.A.C. 7:26E-8, then Shieldalloy and TRC agree to maintain a remediation funding source, pursuant to N.J.A.C. 7:26C-7, in

an amount that is sufficient to pay for the operation, maintenance and monitoring of the engineering and institutional controls.

#### IX. Oversight Cost Reimbursement

66. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph 68, determined pursuant to N.J.A.C. 7:26C-9.3, Shieldalloy and TRC agree to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, for the period being charged.

67. Shieldalloy and TRC agree that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Administrative Consent Order as provided herein for those oversight costs that have accrued prior to that termination.

68. Shieldalloy and TRC also agree to pay interest on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

#### X. Reservation of Rights

69. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event that the Department determines that Shieldalloy and TRC have violated the terms of this Administrative Consent Order. Before the Department unilaterally terminates this Administrative Consent Order, the Department will notify Shieldalloy and TRC in writing of the obligation(s) which one or both have not performed, and Shieldalloy and TRC shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).

70. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against Shieldalloy and TRC for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, civil, or civil administrative penalties, Shieldalloy and TRC may raise, among other defenses, a defense that Shieldalloy and TRC failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If Shieldalloy and TRC are successful in establishing such a defense based on the administrative record, Shieldalloy and TRC shall not be liable for penalties for failure to comply with that particular requirement of the Administrative Consent Order. Although Shieldalloy and TRC may raise such defenses in any action initiated by the Department for injunctive relief, Shieldalloy and TRC hereby agree not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order and

under no circumstances shall Shieldalloy and TRC initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

71. Except as otherwise stated in this Administrative Consent Order, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which Shieldalloy and TRC may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Administrative Consent Order, Shieldalloy and TRC reserve any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

72. This Administrative Consent Order shall not be construed to affect or waive the claims of federal or state natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources; provided, however, that this Administrative Consent Order shall also not affect or waive any defenses of any person as to such claims, including but not limited to the defense that all federal and/or state natural resource damage liability, if any, was fully resolved by virtue of the March 26, 1997 Bankruptcy Settlement among Shieldalloy, the State of New Jersey and the United States, specifically referencing but not limited to Paragraphs 7.g. and 7.l. of that Agreement.

73. Except as otherwise set forth herein, by the execution of this Administrative Consent Order the Department does not release Shieldalloy and TRC from any liabilities or obligations Shieldalloy and TRC may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

#### XI. Force Majeure

74. If any event specified in the following paragraph occurs which Shieldalloy and TRC believe or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Administrative Consent Order, Shieldalloy and TRC agree to notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. Shieldalloy and TRC agree to take all necessary action to prevent or minimize any such delay.

75. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

a) Shieldalloy and TRC have complied with the notice requirements of the preceding paragraph;

b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Shieldalloy and TRC; and

c) Shieldalloy and TRC have taken all necessary action to prevent or minimize any such delay.

76. The burden of proving that any delay is caused by circumstances beyond the control of Shieldalloy and TRC and the length of any such delay attributable to those circumstances shall rest with Shieldalloy and TRC

77. "Force Majeure" shall not include the following:

a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

b) Increases in the cost or expenses incurred by Shieldalloy and TRC in fulfilling the requirements of this Administrative Consent Order;

c) Contractor's breach, unless Shieldalloy and TRC demonstrates that such breach falls within the above paragraphs; and

d) Failure to obtain access required to implement this Administrative Consent Order, unless denied by a court of competent jurisdiction.

## XII. Penalties

78. Shieldalloy and TRC agree to pay penalties for its violations of this Administrative Consent Order and for its violations of a deed notice or declaration of environmental restriction that is part of a remedial action implemented pursuant to this Administrative Consent Order, according to the amounts and conditions in this section.

79. Shieldalloy and TRC agree:

a) That each violation of any requirement, condition or deadline in this Administrative Consent Order constitutes an additional, separate, and distinct violation to which penalties apply;

b) That each day that a violation continues constitutes an additional, separate, and distinct violation to which penalties apply;

c) To pay interest, at the rate set forth in the New Jersey Court Rules, R. 4:42-11(a)i, on any unpaid penalty pursuant to this Administrative Consent Order commencing on the first day after it has agreed to pay a penalty pursuant to this Administrative Consent Order;

d) That nothing in this Administrative Consent Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Administrative Consent Order;



e) That its payment of a penalty pursuant to this Administrative Consent Order does not alter Shieldalloy and TRC's responsibility to complete any requirement of this Administrative Consent Order; and

f) To regard payments of penalties pursuant to this Administrative Consent Order as payments of civil or civil administrative penalties pursuant to the Spill Compensation And Control Act, N.J.S.A. 58:10-23.11 through - 23.14.

80. Shieldalloy and TRC agree to pay a penalty for all violations of this Administrative Consent Order beginning on the first calendar day following the day the noncompliance begins and continually thereafter until the final day of correction of the noncompliance, in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
1 - 7 days	\$ 500 per calendar day
8 - 14 days	\$ 1,000 per calendar day
15 days and over	\$ 2,500 per calendar day

81. The Department will provide Shieldalloy and TRC with written notice of each violation, including a description of the conditions of this Administrative Consent Order that Shieldalloy and TRC have violated, the date that Shieldalloy and TRC was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to Paragraph 80, above.

82. Shieldalloy and TRC agree to pay each penalty required by this Administrative Consent Order by cashier's check or certified check payable to the "Treasurer, State of New Jersey" accompanied by DEP Form 062A and a letter referencing this Administrative Consent Order and the violations for which Shieldalloy and TRC are submitting the payment within 30 calendar days after its receipt of a penalty payment demand from the Department pursuant to Paragraph 81, above.

83. Shieldalloy and TRC agree that nothing herein shall hmit the Department's ability, upon Shieldalloy and TRC's failure to pay a penalty pursuant to this Administrative Consent Order, to pursue civil or civil administrative penalties or take any other enforcement action for any violations of this Administrative Consent Order.

84. Shieldalloy and TRC are jointly and severally liable for penalties for violations of this Administrative Consent Order.

85. Subject to the procedures enumerated in Paragraph 70 above, Shieldalloy and TRC agree to pay a penalty in the amount of the economic benefit (in dollars) which Shieldalloy and TRC have realized as a result of not complying, or by delaying compliance, with the requirements of this Administrative Consent Order, including the following:

a) The amount of savings realized from avoided capital or noncapital costs resulting from the violation;

b) The return earned or that may be earned on the amount of the avoided costs;

c) All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

d) All other benefits resulting from the violation.

86. Shieldalloy and TRC agree that the Department will consider the following factors in determining a penalty for economic benefit:

a) The amount of capital investments required, and whether they are one-time or recurring;

b) The amount of one-time nondepreciable expenditures;

c) The amount of annual expenses;

d) The useful life of capital;

e) Applicable tax, inflation and discount rates;

f) The amount of low interest financing, the low interest rate, and the corporate debt rate; and

g) Any other factors relevant to economic benefit.

87. If the total economic benefit was derived from more than one violation, Shieldalloy and TRC agree that the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

### XIII. Dispute Resolution

88. In the event a conflict arises between Shieldalloy and TRC and the Department, Shieldalloy and TRC may institute the Department's dispute resolution process at N.J.A.C. 7:26C-1.4 and 7:26C-9.4 and any other process utilized by the Department.

### General Provisions

89. In addition to the Department's statutory and regulatory rights to enter and inspect, Shieldalloy and TRC agree to allow the Department and its authorized representatives access to all areas of the Site Shieldalloy and TRC has access to, at all times, for the purpose of monitoring Shieldalloy and TRC's compliance with this Administrative Consent

Order and/or to perform any remedial activities Shieldalloy and TRC fails to perform as required by this Administrative Consent Order. Shieldalloy and TRC agree that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to Paragraph 69, below.

90. Shieldalloy and TRC agree to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Shieldalloy and TRC of their obligation to obtain written approvals as required herein.

91. Shieldalloy and TRC agree to provide a copy of this Administrative Consent Order to each contractor and subcontractor retained to perform the work required by this Administrative Consent Order and agree to condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Administrative Consent Order. Shieldalloy and TRC agree to be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

92. Nothing in this Administrative Consent Order relieves Shieldalloy and TRC from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent Order shall not excuse Shieldalloy and TRC from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Administrative Consent Order. This Administrative Consent Order shall not preclude the Department from requiring that Shieldalloy and TRC obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1 E-1 et seq., and the Spill Compensation and Control Act N.J.S.A. 58:10:23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by Shieldalloy and TRC during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then Shieldalloy and TRC agree to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

93. All work plans, schedules, and other documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.

94. Upon the receipt of a written request from the Department, Shieldalloy and TRC agree to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and

contractual documents, were developed pursuant to this Administrative Consent Order. Shieldalloy and TRC reserves its right to assert a privilege regarding such documents, but agree not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

95. Shieldalloy and TRC agree to comply with this Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

96. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by Shieldalloy and TRC and the Department. Any amendment to this Administrative Consent Order shall be executed by the Department and Shieldalloy and TRC. The Department reserves the right to require the resolution of any outstanding violations of the rules of this prior to executing any such amendment.

97. Shieldalloy and TRC waive their rights to an administrative hearing concerning the entry of this Administrative Consent Order.

98. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

99. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.

100. This Administrative Consent Order represents the entire integrated agreement between the Department and Shieldalloy and TRC concerning the site subject to this Administrative Consent Order and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

101. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, Shieldalloy and TRC agree to record a copy of this Administrative Consent Order with the County Clerk, Gloucester County, State of New Jersey and agree to provide the Department with written verification of compliance with this paragraph which shall include a copy of this Administrative Consent Order stamped "Filed" by the County Clerk.

102. This Administrative Consent Order shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter party's responsibilities under this Administrative Consent Order.

103. Shieldalloy and TRC agree to preserve, during the pendency of this Administrative Consent Order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of Shieldalloy and TRC's divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, Shieldalloy and TRC may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, Shieldalloy and TRC may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, Shieldalloy and TRC agree to submit to the Department all data and information, including technical records and contractual documents or copies of the same. Shieldalloy and TRC reserves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, Shieldalloy and TRC agree not to assert any privilege or confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

104. Shieldalloy and TRC agree to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, Shieldalloy and TRC agree to submit a cost review pursuant to this Administrative Consent Order to the Department. Shieldalloy and TRC agree to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the Shieldalloy and TRC agree to obtain and submit to the Department additional remediation funding source pursuant to this Administrative Consent Order.

105. If Shieldalloy and TRC implement a remedial action at the site that includes institutional and/or engineering controls pursuant to N.J.A.C. 7:26E-8, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source. This Administrative Consent Order shall otherwise be terminated pursuant to Paragraph 106 below.

106. If Shieldalloy and TRC remediate contaminated soil at the Site to the Department's unrestricted use soil standard and any other contaminated media to the applicable remediation standard, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by Shieldalloy and TRC of written notice from

the Department stating that Shieldalloy and TRC have completed the remediation required by this Administrative Consent Order in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Administrative Consent Order and therefore Shieldalloy and TRC does not need to continue to maintain a remediation funding source nor pay the annual 1 % surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Administrative Consent Order is thereby terminated. Such written notice shall not relieve Shieldalloy and TRC from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Administrative Consent Order.

107. Shieldalloy and TRC may assert a claim of confidentiality for any information submitted by Shieldalloy and TRC pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.

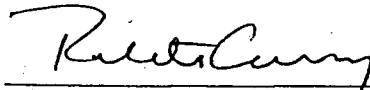
108. Shieldalloy and TRC agree to submit to the Department, along with two original copies of the Administrative Consent Order, signed by Shieldalloy and TRC, documentary evidence, such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind Shieldalloy and TRC to the terms of this Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

109. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and Shieldalloy and TRC.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: 2/1/06

BY:



Ronald T. Corcoran, Assistant Director  
Oversight Resources Allocation Element

SHIELDALLOY METALLURGICAL CORPORATION

Date: 2/1/06

BY:



Signature

Joseph S. Diegel

Print Full Name Signed Above

Vice-President

Title

TRC Companies, INC.

Date 2/1/06

BY: M H Dodd  
Signature

Martin H. Dodd  
Print Full Name Signed Above

Senior Vice President  
Title

ISRA-001  
1/2005

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF RISK MANAGEMENT, INITIAL NOTICE & CASE ASSIGNMENT- ISRA SECTION  
P.O. Box 435  
401 EAST STATE STREET  
TRENTON, NJ 08625-0435

INDUSTRIAL SITE RECOVERY ACT (ISRA)

**GENERAL INFORMATION NOTICE (GIN)**

This information must be submitted to the address listed above within 5 calendar days following any applicable triggering event as specified at N.J.A.C. 7:26B-3.2. Answer all questions. Should you encounter any problems in completing this form, do not hesitate to call (609) 633-0708 between the hours of 8:00 a.m. and 4:30 p.m. and ask for a representative of the Initial Notice Section. Submitting insufficient data may cause processing delays and possible postponement of your transaction.

PLEASE TYPE OR PRINT	Date	May 15, 2006
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Enter the name of the Industrial Establishment (business which operates at the site) as defined in N.J.A.C. 7:26B-1.4, which is the subject of this application. This will be the business that uses hazardous substances and has a SIC/NAICS number within the subject realm of ISRA. NOTE: If more than one Industrial Establishment (business) operates at the site (multiple tenancy), and the transaction which initiates ISRA is a sale of property then a separate General Information Notice is required for each Industrial Establishment (tenant) that uses hazardous materials and has a SIC/NAICS number within the subject realm of ISRA.

I.	A.	Industrial Establishment				
		Name of Business		Shieldalloy Metallurgical Corporation	Telephone #	856/692-4201
		Street Address		35 South West Boulevard (formerly 12 West Boulevard)		
		City or Town	Borough of Newfield	State	New Jersey	Zip Code 08344
		Municipality	Newfield	County	Gloucester	
	B.	Tax Block Number(s)		See Attachment A	Tax Lot Number(s)	See attachment A
	C.	Does the Industrial Establishment include the Entire Site <input checked="" type="checkbox"/> or a Leasehold Portion <input type="checkbox"/> of the Block and Lots designated in IB above (place an "X" after the correct designation).				
	D.	NAICS Number	331312 (Required)	SIC Number	(Optional)	
		To determine your NAICS number please refer to the "Official NAICS Page" at <a href="http://www.census.gov/epcd/naics02">www.census.gov/epcd/naics02</a> or contact the NJ Department of Labor at 609-292-2633.				
		Please provide a description of operations conducted on site by the Industrial Establishment listed in "A" above to verify the listed NAICS # as accurate. <u>Manufacturing of compacted metal alloy products and grinding of metal powders.</u>				



E.	Current Property Owner(s)			
	Business Name	Shieldalloy Metallurgical Corporation		
	Contact Person	Pamela J. Bradway	Telephone Number	856/241-4620
	Street Address	545 Beckett Road, Suite 201		
	Municipality	Swedesboro	State	New Jersey
			Zip Code	08085

F.	Current Business Owner (complete this section even if the same as 1.A above)			
	Business Name	Shieldalloy Metallurgical Corporation		
	Contact Person	Pamela J. Bradway	Telephone Number	856/241-4620
	Street Address	545 Beckett Road, Suite 201		
	Municipality	Swedesboro	State	New Jersey
			Zip Code	08085

2. Provide a current tax map and a scaled site map showing the entire property and all current structures located on the blocks and lots listed in 1A above. For Department data entry and identification purposes the boundaries of each industrial establishment currently located on the site shall be highlighted and clearly labeled on the scaled site map. See Site Map provided as Attachment B and Tax Maps provided as Attachment C.

3. Have there been any previous or concurrent ISRA/ECRA submissions (including Applicability Determinations or De Minimis Quantity Exemption Application) by this Industrial Establishment or another Industrial Establishment, which occupied the same tax block and lot number?

	Yes	X	No	
--	-----	---	----	--

If Yes, Name of Industrial Establishment(s)			
ISRA/ECRA Case No(s)		Current Status	

4. Has the same property occupied by the Industrial Establishment in #1A - #1C above received a No Further Action Letter or Negative Declaration Approval?

	Yes (please provide copy)	X	No	
--	---------------------------	---	----	--

If yes, also provide a copy of a scaled site map, which clearly depicts the site or portions thereof that the prior No Further action letter or Negative Declaration Approval includes. N/A

Please note: If the Block and Lot designation for the site on which the Industrial Establishment listed in 1A above is different than the Block and Lot listed on the prior No Further Action approval or Negative Declaration Approval then please provide a brief description of when the designation change occurred and a statement supporting that the current application is for the same site. The Department will not assume the application for the current site is the same site referenced on a prior no further action approval if the Block and Lots are different.

5. Indicate the transaction(s), which initiates the ISRA review. Check all that apply (see N.J.A.C. 7:26B-3.2 & 3.3):

	Sale of Property		Sale of Business		Sale of Assets
X	Cessation		Foreclosure		Stock Transfer/Corporate Merger
	Bankruptcy		Partnership Change		Other (attach documentation to explain)

See Attachment D, consisting of Public Notice of Cessation of Operations, dated May 15, 2006.

6. If a cessation of operations is involved at this location provide the following information:

A.	Provide the date of the public release of the decision to close the facility	5	/	15	/	2006	, or
B.	Provide the date that operations ceased		/		/		, or
C.	Provide the date that operations will cease	6	/	30	/	2006	

7. If the transaction initiating an ISRA review is an agreement of sale or execution of an option to purchase, fill in the date of execution of that instrument below. If a sales agreement has not been signed then you may not have triggered ISRA unless another trigger such as a cessation of operations has also occurred. A copy of the sales agreement is required only if the Industrial Establishment is also applying for a Remediation Agreement.

A.	Is a sale involved?	Yes	X	No (If no, skip 7B, C and D.)
B.	Provide the date of the Agreement/Notifications of Option to Purchase		/	
C.	Provide the date proposed for transfer of title		/	
D.	Please complete the following:			
	NAME OF PARTY/PURCHASER:			
	ADDRESS:			
	PHONE #:	CONTACT PERSON		
E.	<i>Withdrawal Notification: I understand as the contract seller that if the agreement is terminated then I am no longer required to obtain a no further action letter or authorization letter from the Department. In accordance with the Industrial Site Recovery Act rules (N.J.A.C. 7:26B-3.4) a withdrawal affidavit will be submitted stating the reasons why compliance with ISRA no longer applies to the site referenced in Question 1A above.</i>			
				(The signatory on the certification shall initial here)

8. Provide the name and mailing address of an individual to be designated as the "Authorized Agent": the primary contact with the Department for all matters relating to this ISRA review. This can be an environmental consultant or attorney assisting the owner or operator with their ISRA compliance obligations. All written correspondence from the Department will be addressed to the designated Authorized Agent except the final no further action approval which will be addressed to the individual listed in #11 below.

Name	David R. Smith	Telephone #	856/692-4201
Firm	TRC Corporation		
Street Address	35 South West Boulevard		

Municipality	Newfield	State	New Jersey	Zip Code	08344
Fax #	856/697-9025	Email Address (optional)	dsmith@shieldalloy.com/ dsmith@trcsolutions.com		

9. Pursuant to N.J.A.C. 7:26B-3.3(a)10, the owner/operator shall perform all remedial activities according to one of the following schedules (check the appropriate statement): Please note: by definition Remedial Activities includes the completion of a Preliminary Assessment, Site Investigation, Remedial Investigation or Remedial Action as applicable. At a minimum a Preliminary Assessment shall be completed in order to obtain a no further action approval from the Department.

	All remedial activities will be done in accordance with the schedule set forth at N.J.A.C. 7:26B-6.1, 6.2 and 6.3.
X	All remedial activities will be done in accordance with the enclosed alternate schedule. See schedule contained in Attachment E, consisting of the February 1, 2006 NJDEP Administrative Consent Order entitled In the Matter of the Shieldalloy Metallurgical Corporation Site and Shieldalloy Metallurgical Corporation and TRC Companies, Inc., Public Interest No. 000297.

10. Do you consider this site to be a "Brownfield" as defined below:	X	Yes		No
--	---	-----	--	----

"Brownfield Site" means any former or current commercial or industrial site that is currently vacant, underutilized or the remediation is being conducted with the intent to pursue redevelopment and which there has been, or is suspected to have been a discharge of a contaminant.

11. Please provide the name and mailing address of the property owner or business owner assuming the primary responsibility for the remediation of the referenced site subject to this filing. This is NOT the consultant or law firm hired to assist the owner or operator with their ISRA compliance obligations. The Department will address the final no further action/covenant not to sue determination for the industrial establishment to the individual listed below. All other correspondence from the Department will be directed to the authorized agent listed in item 8 above.

Name	Eric E. Jackson				
Title	President				
Firm	Shieldalloy Metallurgical Corporation			Telephone #	856/241-4620
Street Address	545 Beckett Road, Suite 201				
Municipality	Swedesboro	State	New Jersey	Zip Code	08085
Fax #	856/241-4652	Email address (optional)			

A.	Does the listed individual or firm own the property		, business		, or both	X	?
	(Place a check in the appropriate space)						
B.	Right of Entry: Pursuant to the Industrial Site Recovery Act rules (N.J.A.C. 7:26B-1.9), by the submission and certification of this document, I give my consent to the entry of the industrial establishment by the Department and its authorized representatives during any phase of remediation, upon the presentation of credentials, to inspect the site.						
	(The signatory on the certification shall initial here)						

*Handwritten signature/initials*

### CERTIFICATION:

The following certification shall be signed pursuant to the requirements of N.J.A.C. 7:26B-1.6(e).

An individual who is familiar with the Industrial Establishment through on-site observation must sign the certification. The individual must be in a position of authority that can attest to the accuracy of the response to each question. When the situations arise, the certification shall be executed as follows:

1. For a corporation or limited liability company, by a principal executive officer of at least the level of Vice President;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;
3. For a municipality, state, Federal or other public agency, by either a principal executive officer or ranking elected official; or
4. By a duly authorized representative of a corporation, partnership, sole proprietorship, municipality, state or Federal or other public agency, as applicable. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described in 1, 2, or 3 above and the authorization meets the following criteria:
  - The authorization specifies either an individual or a position having responsibility for the overall operation of the industrial establishment or activity, such as the position of plant manager, or superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
  - The written authorization is submitted to the Department; and
  - If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements listed above shall be submitted to the Department prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

*I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13.*

Typed/Printed Name		Eric E. Jackson	
Title		President, Shieldalloy Metallurgical Corporation	
Signature		Date May 15, 2006	
Sworn to and Subscribed Before Me			
on this	15	day of	May 20 06
Notary			

**Attachment A  
Block and Lot Description**

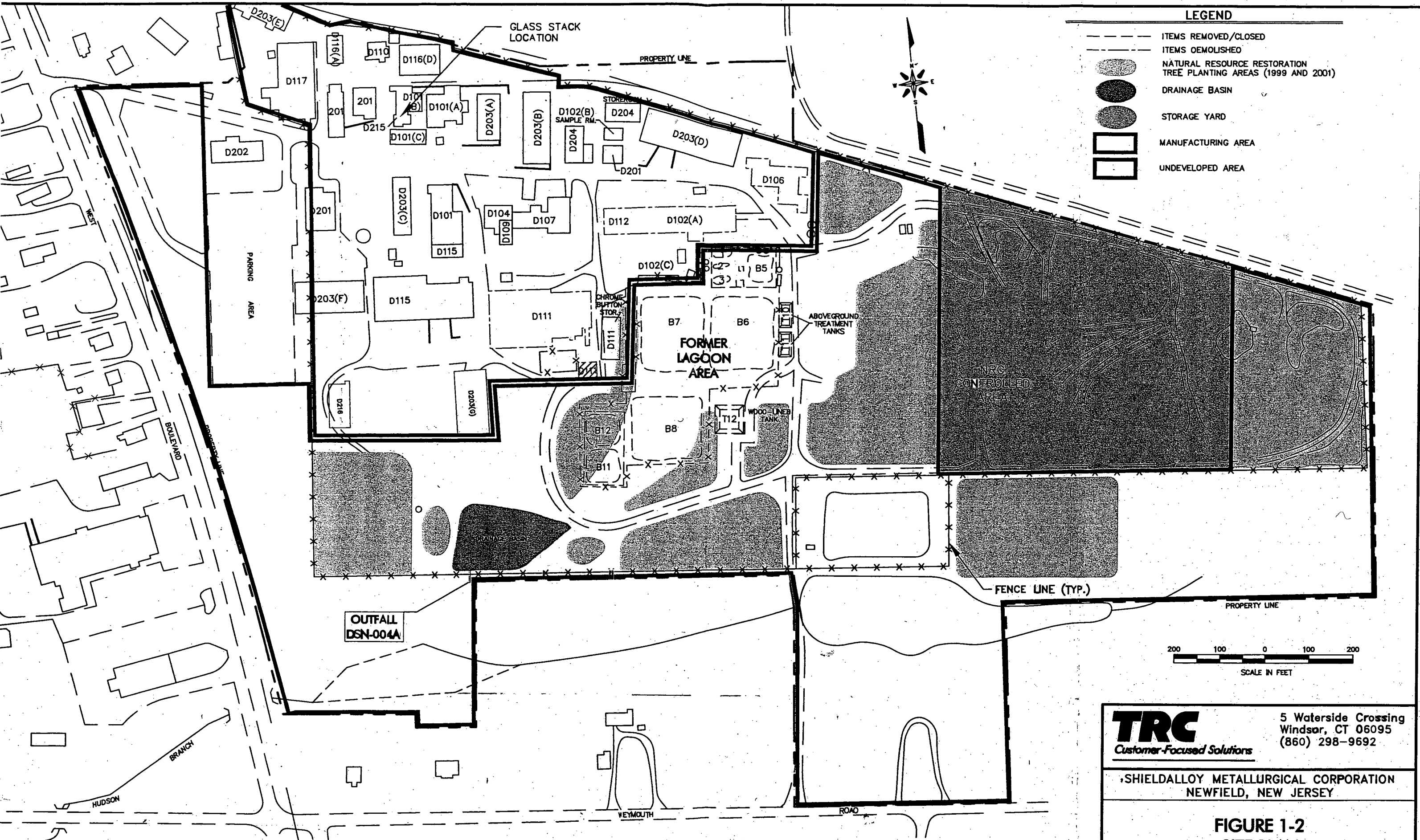
The Site is located partly in the Borough of Newfield, Gloucester County, and partly in the City of Vineland, Cumberland County. The tax map references are as follows:

Newfield	Block 209, Lots 2 and 7 and Block 1002, Lots 1, 2, 3, 3.01, 4, 5, 15, 15.01, 16 and 18.
Vineland	Block 83, Lot 13-1* and Block 84, Lots 4-1 and 5.

\* Note that the correct identification for this parcel is Block 83 (not Block 8), Lot 13-1, in the City of Vineland. This can be seen from the Tax Map for the City of Vineland provided as part of Attachment C. The parcel is incorrectly identified as Block 8, Lot 13-1, in the February 1, 1006 ACO provided as Attachment E. This error in the ACO was discovered by SMC during the course of preparing this GIN, and SMC will be seeking amendment to the ACO to correct the error as soon as possible.

## **Attachment B**

### **Site Map**



**TRC**  
Customer-Focused Solutions

5 Waterside Crossing  
Windsor, CT 06095  
(860) 298-9692

SHIELDALLOY METALLURGICAL CORPORATION  
NEWFIELD, NEW JERSEY

**FIGURE 1-2  
SITE PLAN**

Date: 04/05

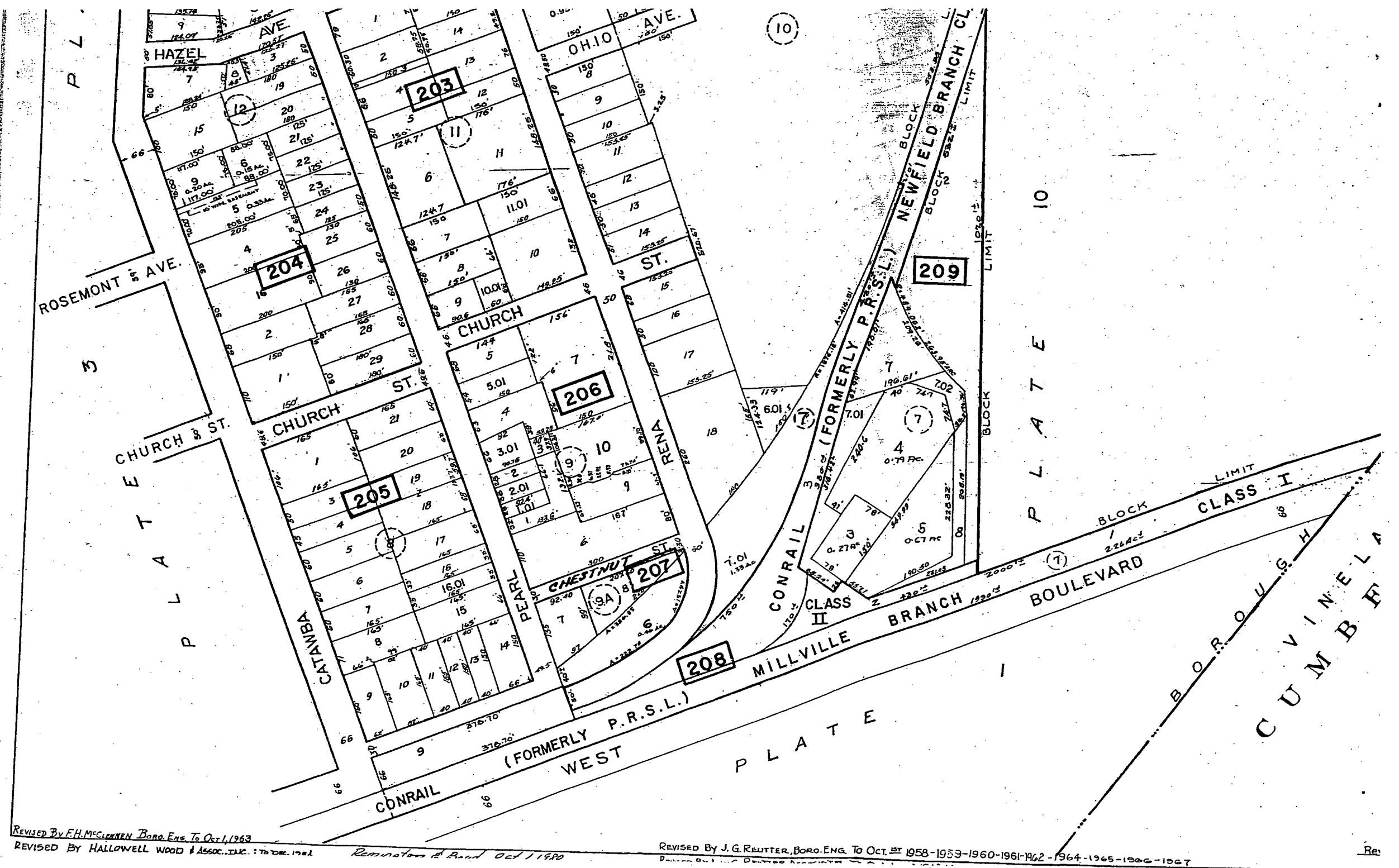
Project No. 26770-0100-00000

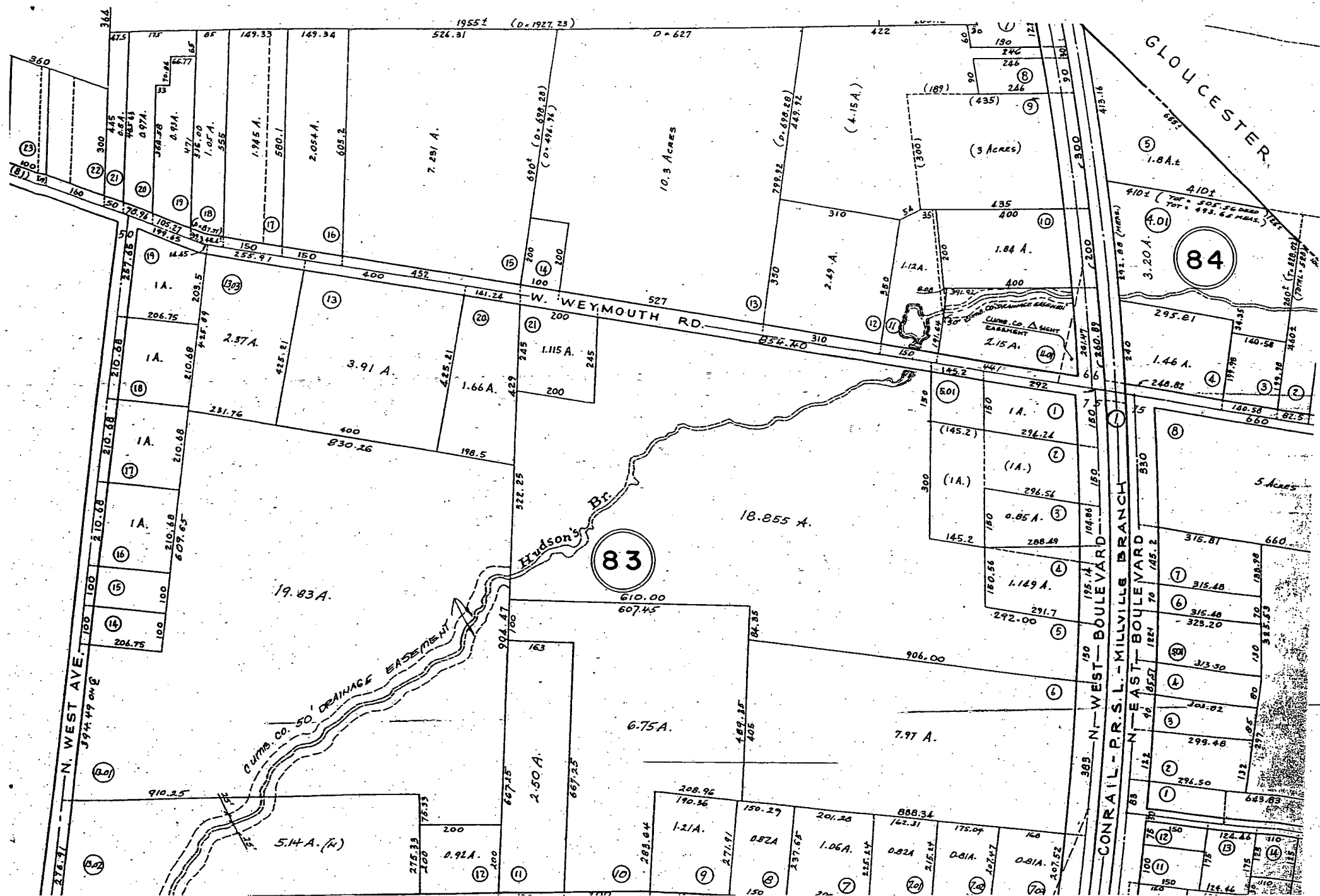
## **Attachment C**

### **Tax Maps**









**Attachment D**

**Public Notice of Cessation of Operations  
Dated May 15, 2006**

MAY 15, 2006

Shieldalloy Metallurgical Corporation announces the closure of alloy additives production at the company's Newfield, New Jersey facility.

Newfield, New Jersey -- May 15, 2006 -- "Shieldalloy Metallurgical Corporation (SMC) today announces our decision to cease all remaining production operations at our Newfield, New Jersey facility effective June 30, 2006, and for the foreseeable future." The company and its predecessors have manufactured products for the specialty metals industry at this location for more than 40 years. However, the company's domestically produced materials can no longer compete with imports. SMC officials stated that, "over the past decade, international suppliers and producers have gained an advantage that has undermined pricing for SMC's domestically manufactured products, in part due to export credit programs in Asia".

SMC fully recognizes its obligation to the Borough of Newfield, its citizens and the environment and is committed to complete the remedial plan as approved by New Jersey Department of Environmental Protection (NJDEP). In April the company spent \$17.9 million on non-radiological remediation activities at the site. It holds in trust and in letters of credits the funds to remediate all remaining environmental obligations.

SMC is a subsidiary of Metallurg Holdings, Inc., Metallurg Holdings, Inc., through its operating subsidiaries in the United States, United Kingdom and Brazil, is one of the world's leading producers and marketers of highly engineered and technologically advanced metal additives, including ferrovanadium, aluminum master alloys, chromium metal and tantalum and niobium oxides. Metallurg employs approximately 800 people worldwide, including 200 in North America.

###

**Attachment E**

**February 1, 2006 NJDEP Administrative Consent Order entitled In the Matter of the Shieldalloy Metallurgical Corporation Site and Shieldalloy Metallurgical Corporation and TRC Companies, Inc. Public Interest No. 000297.**



# State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE  
Governor

LISA P. JACKSON  
Acting Commissioner

PI # 000297

IN THE MATTER OF THE  
SHIELDALLOY METALLURGICAL  
CORPORATION SITE  
AND  
SHIELDALLOY METALLURGICAL  
CORPORATION and  
TRC COMPANIES, INC.  
Respondents

ADMINISTRATIVE CONSENT

ORDER

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 through -19; the Solid Waste Management Act, N.J.S.A. 13:1E-1 through -91, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director, Division of Remediation Support, Oversight Resources Allocation Element, pursuant to N.J.S.A. 13:1B-4.

## FINDINGS

1. The Shieldalloy Metallurgical Corporation Site is located at 12 West Boulevard, also known as including Block 209, Lots 2 and 7 and Block 1002, Lots 1, 2, 3, 3.01, 4, 5, 15, 15.01, 16 and 18 on the tax maps of the Borough of Newfield, Gloucester County, and Block 8, Lot 13-1 and Block 84, Lots 4-1 and 5 on the tax maps of the City of Vineland, Cumberland County (hereinafter "the site") and is the subject of this Administrative Consent Order.

2. Since 1951, Shieldalloy Metallurgical Corporation (hereinafter "Shieldalloy"), has owned and operated a chromium alloy and specialty alloy manufacturing facility at the Site.

3. Shieldalloy is a Delaware Corporation with its corporate offices located at 545 Beckett Road, Suite 201, Swedesboro, New Jersey and is a party executing this Administrative Consent Order.

4. TRC Companies, Inc. (hereinafter "TRC") is a Delaware Corporation, with its corporate offices located at 21 Griffin Road North, Windsor, Connecticut, and is a party executing this Administrative Consent Order.

5. On October 5, 1988 the Department entered into an Administrative Consent Order with Shieldalloy for the remedial investigation and cleanup of the Site. The Administrative Consent Order was amended on August 31, 1989 and again on September 11, 1992. These documents are herein incorporated by reference into this document.

6. As required by the March 26, 1997 Bankruptcy Settlement, Shieldalloy currently has a Letter of Credit in the amount of \$4,250,000.00 established as a security for the "NRC Slag Remediation" environmental project to be completed at the Site. This ACO in no way affects the requirement to maintain this financial assurance.

7. This Administrative Consent Order shall serve to add TRC as a signatory to this Administrative Consent Order and to define the remedial work that will be conducted by each party.

8. By entering this Administrative Consent Order, neither Shieldalloy nor TRC admit to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this Administrative Consent Order.

9. This Administrative Consent Order is, to the greatest extent possible, consistent with and complies with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601, et seq., and the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 C.F.R. §300.1, et seq. All activities undertaken by Shieldalloy and TRC pursuant to this Administrative Consent Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted pursuant to this Administrative Consent Order, if approved by the Department, shall be considered to be consistent with the NCP.

10. The scope of the investigation and remediation required by this Administrative Consent Order will include all contaminants at the above referenced Site, and all contaminants, which are emanating from or which have emanated from the Site except as excluded herein.

#### ORDER

11. Contamination is known to exist at and emanating from the site, including but not limited to soil contamination with radioactive material and perchlorate contamination in the groundwater. The radioactive material is regulated by the Nuclear Regulatory Commission, and Shieldalloy is required to remediate that radioactive contamination pursuant to its Nuclear Regulatory Commission Source Material License, SMB-743. New Jersey also regulates radioactive material pursuant to the Radiation Protection Act, N.J.S.A. 26:2D and the implementing regulations, including but not limited to the Soil Remediation Standards for Radioactive Material, N.J.A.C. 7:28-12, and reserves any rights it may have with respect to the radioactive materials at the Site. The Department asserts that perchlorate is a pollutant pursuant to the New Jersey Water Pollution Control Act.



Shieldalloy is required to remediate the perchlorate contamination at and emanating from the site. TRC will have no obligation for such remediation.

12. Shieldalloy herein agrees to conduct all remedial activities necessary to address the radioactive and perchlorate contamination at and/or emanating from the site, and TRC shall have no responsibility for such remediation.

13. Shieldalloy is required to remediate the perchlorate contamination in the ground water at and emanating from the Site to an action level of 5 ppb. If, a different regulatory standard for perchlorate is adopted, and the codified concentration limit for ground water is higher than 5 ppb, then Shieldalloy shall remediate the perchlorate contamination to that different regulatory standard.

14. TRC herein agrees to conduct all remedial activities necessary to address all contaminants not including the radioactive contamination and/or perchlorate contamination at and/or emanating from the site.

15. Should TRC fail to conduct and/or complete remediation activities at the Site, upon notification from the Department Shieldalloy shall conduct all remaining remedial work as required by the Department.

#### I. Industrial Site Recovery Act Requirements

16. Shieldalloy's and TRC's compliance with the requirements of this Administrative Consent Order shall satisfy the remedial requirements of the Industrial Site Recovery Act. Should there be a triggering event at the Site, Shieldalloy shall follow the administrative requirements of Act. The Department's notification under paragraph 84 of this Administrative Consent Order, namely that the obligations of this Administrative Consent Order are completed, shall also signify that the ISRA requirements have been met.

#### II. Remedial Investigation of Perchlorate

17. Within sixty (60) calendar days after the effective date of this Administrative Consent Order or as otherwise approved in writing by the Department, Shieldalloy agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E to address the perchlorate contamination.

18. Within thirty (30) calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the RI Work Plan to conform to the Department's comments and agrees to submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

19. Upon receipt of the Department's written final approval of the RI Work Plan, Shieldalloy agrees to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

20. Shieldalloy agrees to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.

21. If upon review of the RI Report the Department determines that additional remedial investigation is required, Shieldalloy agrees to conduct additional remedial investigation as required by the Department including submission of another RI Workplan and schedule, and submit another RI Report.

22. Within thirty (30) calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, Shieldalloy agrees to modify the RI Report to conform to the Department's comments and agrees to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

23. Within sixty (60) calendar days after receipt of the Department's written final approval of the RI Report or as otherwise approved in writing by the Department, Shieldalloy agrees to submit to the Department a Feasibility Study (hereinafter the "FS Report") to address the perchlorate contamination.

24. Within thirty (30) calendar days after receipt of the Department's written comments on the FS Report, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the FS Report to conform to the Department's comments and agrees to submit a modified FS Report to the Department. The determination as to whether or not the modified FS Report, as resubmitted, conforms the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

### III. Remedial Action for Perchlorate

25. Within sixty (60) calendar days after the signing of a Record of Decision for the Perchlorate Plume Operable Unit (hereinafter "OU1-Perchlorate"), or as otherwise approved in writing by the Department, Shieldalloy agrees to submit to the Department a Draft Final Remedial Design Report for OU1-Perchlorate, including an implementation schedule.

26. Within thirty (30) calendar days after receipt of the Department's written comments on the Draft Final Design Report for OU1-Perchlorate, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the Draft Final Design Report for OU1-Perchlorate to conform to the Department's comments and agrees to submit a Final Design

Report for OUI-Perchlorate to the Department. The determination as to whether or not the Final Design Report for OUI-Perchlorate, as submitted, conforms to the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

27. Upon receipt of the Department's written final approval of the Final Design Report for OUI-Perchlorate, Shieldalloy agrees to implement the approved Final Design Report for OUI-Perchlorate in accordance with the schedule therein.

28. Within thirty (30) calendar days after receipt of the Department's written approval of the Final Design Report for OUI-Perchlorate, Shieldalloy agrees to submit to the Department a Remedial Action Work Plan for OUI-Perchlorate in accordance with N.J.A.C. C. 7:26E, including an implementation schedule.

29. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Work Plan for OUI-Perchlorate, or as otherwise approved in writing by the Department, Shieldalloy agrees to modify the Remedial Action Work Plan for OUI-Perchlorate to conform to the Department's comments and agree to submit the modified Remedial Action Work Plan for OUI-Perchlorate to the Department. The determination as to whether or not the modified Remedial Action Work Plan for OUI-Perchlorate, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

30. Upon receipt of the Department's written final approval of the Remedial Action Work Plan for OUI-Perchlorate, Shieldalloy agrees to implement the approved Remedial Action Work Plan for OUI-Perchlorate in accordance with the schedule therein.

31. Shieldalloy agrees to submit to the Department a Remedial Action Report for OUI-Perchlorate in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan for OUI-Perchlorate and the schedule therein.

32. If upon review of the Remedial Action Report for OUI-Perchlorate the Department determines that additional remediation is required, Shieldalloy agrees to conduct additional remediation as directed by the Department and agrees to submit subsequent RI Reports and Remedial Action Reports, as applicable.

33. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Report for OUI-Perchlorate, or longer as authorized by the Department, Shieldalloy agrees to modify the Remedial Action Report for OUI-Perchlorate to conform with the Department's comments and agrees to submit the modified Remedial Action Report for OUI-Perchlorate to the Department. The determination as to whether or not the modified Remedial Action Report for OUI-Perchlorate, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

#### IV. Remedial Action for OU1

34. Within 180 calendar days after the effective date of this Administrative Consent Order or as otherwise approved in writing by the Department, TRC agrees to submit to the Department a Draft Final Design Report for the Ground Water Operable Unit (hereinafter "OU1"). The Draft Final Design Report for OU1 shall provide the details for the implementation of the Selected Remedy documented in the Record of Decision for OU1 dated September 24, 1996, including an implementation schedule.

35. Within thirty (30) calendar days after receipt of the Department's written comments on the Draft Final Design Report for OU1, or as otherwise approved in writing by the Department, TRC agree to modify the Draft Final Design Report for OU1 to conform to the Department's comments and agrees to submit a Final Design Report for OU1 to the Department. The determination as to whether or not the Final Design Report for OU1, as submitted, conforms to the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

36. Upon receipt of the Department's written final approval of the Final Design Report for OU1, TRC agrees to implement the approved Final Design Report for OU1 in accordance with the schedule therein.

37. Within thirty (30) calendar days after receipt of the Department's written approval of the Final Design Report for OU1, TRC agrees to submit to the Department a Remedial Action Work Plan for OU1 in accordance with N.J.A.C. 7:26E, including an implementation schedule.

38. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Work Plan for OU1, or as otherwise approved in writing by the Department, TRC agree to modify the Remedial Action Work Plan for OU1 to conform to the Department's comments and agree to submit the modified Remedial Action Work Plan for OU1 to the Department. The determination as to whether or not the modified Remedial Action Work Plan for OU1, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Department's written comments and is otherwise acceptable to the Department, shall be made solely by the Department in writing.

39. Upon receipt of the Department's written final approval of the Remedial Action Work Plan for OU1, TRC agrees to implement the approved Remedial Action Work Plan for OU1 in accordance with the schedule therein.

40. TRC agrees to submit to the Department a Remedial Action Report for OU1 in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan for OU1 and the schedule therein.

41. If upon review of the Remedial Action Report the Department determines that additional remediation is required, Shieldalloy and TRC agree to conduct additional

remediation as directed by the Department and agree to submit subsequent RI Reports and Remedial Action Reports, as applicable.

42. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Report for OU1, or longer as authorized by the Department, TRC agrees to modify the Remedial Action Report for OU1 to conform with the Department's comments and agrees to submit the modified Remedial Action Report for OU1 to the Department. The determination as to whether or not the modified Remedial Action Report for OU1, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

#### V. Soil, Surface Water and Sediment

43. Within sixty (60) calendar days after the signing of a Record of Decision for the Soil, Surface Water and Sediment Operable Unit (hereinafter "OU2"), or as otherwise approved in writing by the Department, TRC agrees to submit to the Department a Draft Final Remedial Design Report for OU2, including an implementation schedule. TRC shall incorporate the requirements of the Scope of Work for Natural Resource Restoration Plan dated June 24, 1996 into the Draft Final Remedial Design Report for OU2.

44. Within thirty (30) calendar days after receipt of the Department's written comments on the Draft Final Design Report for OU2, or as otherwise approved in writing by the Department, TRC agrees to modify the Draft Final Design Report for OU2 to conform to the Department's comments and agrees to submit a Final Design Report for OU2 to the Department. The determination as to whether or not the Final Design Report for OU2, as submitted, conforms to the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

45. Upon receipt of the Department's written final approval of the Final Design Report for OU2, TRC agrees to implement the approved Final Design Report for OU2 in accordance with the schedule therein.

46. Within thirty (30) calendar days after receipt of the Department's written approval of the Final Design Report for OU2, TRC agrees to submit to the Department a Remedial Action Work Plan for OU2 in accordance with N.J.A.C. 7:26E, including an implementation schedule.

47. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Work Plan for OU2, or as otherwise approved in writing by the Department, TRC agrees to modify the Remedial Action Work Plan for OU2 to conform to the Department's comments and agree to submit the modified Remedial Action Work Plan for OU2 to the Department. The determination as to whether or not the modified Remedial Action Work Plan for OU2, as resubmitted, conforms to the Technical Requirements for

Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

48. Upon receipt of the Department's written final approval of the Remedial Action Work Plan for OU2, TRC agrees to implement the approved Remedial Action Work Plan for OU2 in accordance with the schedule therein.

49. TRC agrees to submit to the Department a Remedial Action Report for OU2 in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan for OU2 and the schedule therein.

50. If upon review of the Remedial Action Report for OU2 the Department determines that additional remediation is required, TRC agrees to conduct additional remediation as directed by the Department and agrees to submit subsequent RI Reports and Remedial Action Reports, as applicable.

51. Within thirty (30) calendar days after receipt of the Department's written comments on the Remedial Action Report for OU2, or longer as authorized by the Department, TRC agrees to modify the Remedial Action Report for OU2 to conform with the Department's comments and agrees to submit the modified Remedial Action Report for OU2 to the Department. The determination as to whether or not the modified Remedial Action Report for OU2, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

#### IV. Additional Remedial Investigation and Remedial Action

52. If at any time that this Administrative Consent Order is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety and the environment, TRC agrees to conduct such additional remediation as the Department directs.

#### V. Progress Reports

53. Shieldalloy and TRC agree to submit quarterly progress reports which detail the status of Shieldalloy and TRC's compliance with this Administrative Consent Order to the Department in accordance with N.J.A.C. 7:26E-6.6(b). Shieldalloy and TRC agree to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Administrative Consent Order. Shieldalloy and TRC agree to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. Shieldalloy and TRC may request that the Department allow progress reports be submitted semi-annually or annually.

## VI. Project Coordination

54. Shieldalloy and TRC agree to submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine Shieldalloy's and TRC's compliance with the requirements of this Administrative Consent Order and the applicability of penalties and any other remedies available to the Department.

55. Within seven (7) calendar days after the effective date of this Administrative Consent Order, Shieldalloy and TRC agree to submit to the Department the name, title, address and telephone number of the individual who shall be their technical contact for the Department for all matters concerning this Administrative Consent Order and Shieldalloy and TRC agree that this person is therefore determined to be Shieldalloy's and TRC's agent for the purpose of service for all matters concerning this Administrative Consent Order. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to this agent of the date, time and place of such meeting. Shieldalloy and TRC agree to ensure that the agent is available for and participates in such meeting.

56. Within seven (7) days after the effective date of this Administrative Consent Order the Department will identify the individual who will be the Department's contact for all matters concerning this Administrative Consent Order. Unless the Department otherwise directs in writing, Shieldalloy and TRC agree to submit all payments and copies of all documents required by this Administrative Consent Order to the Department's contact.

57. Shieldalloy and TRC agree to notify, both verbally and in writing, the Department's contact person identified pursuant to Paragraph 55, above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

58. The Department will consider a written request for an extension of time to perform any requirement in this Administrative Consent Order, provided that Shieldalloy and TRC submit any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

## VII. Remediation Funding Source and Remediation Funding Source Surcharge

59. Shieldalloy and TRC agree to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the Site, pursuant to N.J.A.C. 7:26C-7. Shieldalloy and TRC agree that the initial remediation funding source amount is \$ 13,500,000.00.

60. Shieldalloy agrees to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order specifically for the remediation of perchlorate contamination, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the perchlorate, pursuant to N.J.A.C. 7:26C-7. Shieldalloy agrees that the initial remediation funding source amount for perchlorate is \$ 600,000.00.

61. Shieldalloy and TRC agree to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

#### VIII. Project Cost Review

62. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, and annually thereafter on the same calendar day, Shieldalloy and TRC agree to submit to the Department a detailed review of all remediation costs expended by Shieldalloy and TRC to comply with this Administrative Consent Order including:

- a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;
- b) The detailed estimated remediation costs required to comply with this Administrative Consent Order, including all operation, maintenance and monitoring costs; and
- c) The reason for any changes from the previously submitted cost review.

63. At any time after Shieldalloy and TRC submit the first cost review pursuant to the preceding paragraph Shieldalloy and TRC may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Administrative Consent Order. If the Department grants written approval to such a request, Shieldalloy and TRC may amend the amount of the then existing remediation funding source consistent with that approval.

64. If the estimated costs of meeting Shieldalloy and TRC's obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source, Shieldalloy and TRC agree to within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

65. If Shieldalloy and TRC implement a remedial action at the site that includes institutional and/or engineering controls pursuant to N.J.A.C. 7:26E-8, then Shieldalloy and TRC agree to maintain a remediation funding source, pursuant to N.J.A.C. 7:26C-7, in



an amount that is sufficient to pay for the operation, maintenance and monitoring of the engineering and institutional controls.

#### IX. Oversight Cost Reimbursement

66. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph 68, determined pursuant to N.J.A.C. 7:26C-9.3, Shieldalloy and TRC agree to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, for the period being charged.

67. Shieldalloy and TRC agree that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Administrative Consent Order as provided herein for those oversight costs that have accrued prior to that termination.

68. Shieldalloy and TRC also agree to pay interest on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

#### X. Reservation of Rights

69. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event that the Department determines that Shieldalloy and TRC have violated the terms of this Administrative Consent Order. Before the Department unilaterally terminates this Administrative Consent Order, the Department will notify Shieldalloy and TRC in writing of the obligation(s) which one or both have not performed, and Shieldalloy and TRC shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).

70. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against Shieldalloy and TRC for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, civil, or civil administrative penalties, Shieldalloy and TRC may raise, among other defenses, a defense that Shieldalloy and TRC failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If Shieldalloy and TRC are successful in establishing such a defense based on the administrative record, Shieldalloy and TRC shall not be liable for penalties for failure to comply with that particular requirement of the Administrative Consent Order. Although Shieldalloy and TRC may raise such defenses in any action initiated by the Department for injunctive relief, Shieldalloy and TRC hereby agree not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order and

under no circumstances shall Shieldalloy and TRC initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

71. Except as otherwise stated in this Administrative Consent Order, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which Shieldalloy and TRC may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Administrative Consent Order, Shieldalloy and TRC reserve any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

72. This Administrative Consent Order shall not be construed to affect or waive the claims of federal or state natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources; provided, however, that this Administrative Consent Order shall also not affect or waive any defenses of any person as to such claims, including but not limited to the defense that all federal and/or state natural resource damage liability, if any, was fully resolved by virtue of the March 26, 1997 Bankruptcy Settlement among Shieldalloy, the State of New Jersey and the United States, specifically referencing but not limited to Paragraphs 7.g. and 7.l. of that Agreement.

73. Except as otherwise set forth herein, by the execution of this Administrative Consent Order the Department does not release Shieldalloy and TRC from any liabilities or obligations Shieldalloy and TRC may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

#### XI. Force Majeure

74. If any event specified in the following paragraph occurs which Shieldalloy and TRC believe or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Administrative Consent Order, Shieldalloy and TRC agree to notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. Shieldalloy and TRC agree to take all necessary action to prevent or minimize any such delay.

75. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

a) Shieldalloy and TRC have complied with the notice requirements of the preceding paragraph;

b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Shieldalloy and TRC; and

c) Shieldalloy and TRC have taken all necessary action to prevent or minimize any such delay.

76. The burden of proving that any delay is caused by circumstances beyond the control of Shieldalloy and TRC and the length of any such delay attributable to those circumstances shall rest with Shieldalloy and TRC

77. "Force Majeure" shall not include the following:

a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

b) Increases in the cost or expenses incurred by Shieldalloy and TRC in fulfilling the requirements of this Administrative Consent Order;

c) Contractor's breach, unless Shieldalloy and TRC demonstrates that such breach falls within the above paragraphs; and

d) Failure to obtain access required to implement this Administrative Consent Order, unless denied by a court of competent jurisdiction.

## XII. Penalties

78. Shieldalloy and TRC agree to pay penalties for its violations of this Administrative Consent Order and for its violations of a deed notice or declaration of environmental restriction that is part of a remedial action implemented pursuant to this Administrative Consent Order, according to the amounts and conditions in this section.

79. Shieldalloy and TRC agree:

a) That each violation of any requirement, condition or deadline in this Administrative Consent Order constitutes an additional, separate, and distinct violation to which penalties apply;

b) That each day that a violation continues constitutes an additional, separate, and distinct violation to which penalties apply;

c) To pay interest, at the rate set forth in the New Jersey Court Rules, R. 4:42-11(a), on any unpaid penalty pursuant to this Administrative Consent Order commencing on the first day after it has agreed to pay a penalty pursuant to this Administrative Consent Order;

d) That nothing in this Administrative Consent Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Administrative Consent Order;

e) That its payment of a penalty pursuant to this Administrative Consent Order does not alter Shieldalloy and TRC's responsibility to complete any requirement of this Administrative Consent Order; and

f) To regard payments of penalties pursuant to this Administrative Consent Order as payments of civil or civil administrative penalties pursuant to the Spill Compensation And Control Act, N.J.S.A. 58:10-23.11 through - 23.14.

80. Shieldalloy and TRC agree to pay a penalty for all violations of this Administrative Consent Order beginning on the first calendar day following the day the noncompliance begins and continually thereafter until the final day of correction of the noncompliance, in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
1 - 7 days	\$ 500 per calendar day
8 - 14 days	\$ 1,000 per calendar day
15 days and over	\$ 2,500 per calendar day

81. The Department will provide Shieldalloy and TRC with written notice of each violation, including a description of the conditions of this Administrative Consent Order that Shieldalloy and TRC have violated, the date that Shieldalloy and TRC was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to Paragraph 80, above.

82. Shieldalloy and TRC agree to pay each penalty required by this Administrative Consent Order by cashier's check or certified check payable to the "Treasurer, State of New Jersey" accompanied by DEP Form 062A and a letter referencing this Administrative Consent Order and the violations for which Shieldalloy and TRC are submitting the payment within 30 calendar days after its receipt of a penalty payment demand from the Department pursuant to Paragraph 81, above.

83. Shieldalloy and TRC agree that nothing herein shall limit the Department's ability, upon Shieldalloy and TRC's failure to pay a penalty pursuant to this Administrative Consent Order, to pursue civil or civil administrative penalties or take any other enforcement action for any violations of this Administrative Consent Order.

84. Shieldalloy and TRC are jointly and severally liable for penalties for violations of this Administrative Consent Order.

85. Subject to the procedures enumerated in Paragraph 70 above, Shieldalloy and TRC agree to pay a penalty in the amount of the economic benefit (in dollars) which Shieldalloy and TRC have realized as a result of not complying, or by delaying compliance, with the requirements of this Administrative Consent Order, including the following:

a) The amount of savings realized from avoided capital or noncapital costs resulting from the violation;

b) The return earned or that may be earned on the amount of the avoided costs;

c) All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

d) All other benefits resulting from the violation.

86. Shieldalloy and TRC agree that the Department will consider the following factors in determining a penalty for economic benefit:

a) The amount of capital investments required, and whether they are one-time or recurring;

b) The amount of one-time nondepreciable expenditures;

c) The amount of annual expenses;

d) The useful life of capital;

e) Applicable tax, inflation and discount rates;

f) The amount of low interest financing, the low interest rate, and the corporate debt rate; and

g) Any other factors relevant to economic benefit.

87. If the total economic benefit was derived from more than one violation, Shieldalloy and TRC agree that the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

### XIII. Dispute Resolution

88. In the event a conflict arises between Shieldalloy and TRC and the Department, Shieldalloy and TRC may institute the Department's dispute resolution process at N.J.A.C. 7:26C-1.4 and 7:26C-9.4 and any other process utilized by the Department.

### General Provisions

89. In addition to the Department's statutory and regulatory rights to enter and inspect, Shieldalloy and TRC agree to allow the Department and its authorized representatives access to all areas of the Site Shieldalloy and TRC has access to, at all times, for the purpose of monitoring Shieldalloy and TRC's compliance with this Administrative Consent

Order and/or to perform any remedial activities Shieldalloy and TRC fails to perform as required by this Administrative Consent Order. Shieldalloy and TRC agree that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to Paragraph 69, below.

90. Shieldalloy and TRC agree to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Shieldalloy and TRC of their obligation to obtain written approvals as required herein.

91. Shieldalloy and TRC agree to provide a copy of this Administrative Consent Order to each contractor and subcontractor retained to perform the work required by this Administrative Consent Order and agree to condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Administrative Consent Order. Shieldalloy and TRC agree to be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

92. Nothing in this Administrative Consent Order relieves Shieldalloy and TRC from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent Order shall not excuse Shieldalloy and TRC from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Administrative Consent Order. This Administrative Consent Order shall not preclude the Department from requiring that Shieldalloy and TRC obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1 E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by Shieldalloy and TRC during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then Shieldalloy and TRC agree to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

93. All work plans, schedules, and other documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.

94. Upon the receipt of a written request from the Department, Shieldalloy and TRC agree to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and

contractual documents, were developed pursuant to this Administrative Consent Order. Shieldalloy and TRC reserves its right to assert a privilege regarding such documents, but agree not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

95. Shieldalloy and TRC agree to comply with this Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

96. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by Shieldalloy and TRC and the Department. Any amendment to this Administrative Consent Order shall be executed by the Department and Shieldalloy and TRC. The Department reserves the right to require the resolution of any outstanding violations of the rules of this prior to executing any such amendment.

97. Shieldalloy and TRC waive their rights to an administrative hearing concerning the entry of this Administrative Consent Order.

98. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

99. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.

100. This Administrative Consent Order represents the entire integrated agreement between the Department and Shieldalloy and TRC concerning the site subject to this Administrative Consent Order and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

101. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, Shieldalloy and TRC agree to record a copy of this Administrative Consent Order with the County Clerk, Gloucester County, State of New Jersey and agree to provide the Department with written verification of compliance with this paragraph which shall include a copy of this Administrative Consent Order stamped "Filed" by the County Clerk.

102. This Administrative Consent Order shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter party's responsibilities under this Administrative Consent Order.

103. Shieldalloy and TRC agree to preserve, during the pendency of this Administrative Consent Order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of Shieldalloy and TRC's divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, Shieldalloy and TRC may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, Shieldalloy and TRC may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, Shieldalloy and TRC agree to submit to the Department all data and information, including technical records and contractual documents or copies of the same. Shieldalloy and TRC reserves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, Shieldalloy and TRC agree not to assert any privilege or confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

104. Shieldalloy and TRC agree to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, Shieldalloy and TRC agree to submit a cost review pursuant to this Administrative Consent Order to the Department. Shieldalloy and TRC agree to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the Shieldalloy and TRC agree to obtain and submit to the Department additional remediation funding source pursuant to this Administrative Consent Order.

105. If Shieldalloy and TRC implement a remedial action at the site that includes institutional and/or engineering controls pursuant to N.J.A.C. 7:26E-8, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source. This Administrative Consent Order shall otherwise be terminated pursuant to Paragraph 106 below.

106. If Shieldalloy and TRC remediate contaminated soil at the Site to the Department's unrestricted use soil standard and any other contaminated media to the applicable remediation standard, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by Shieldalloy and TRC of written notice from



the Department stating that Shieldalloy and TRC have completed the remediation required by this Administrative Consent Order in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Administrative Consent Order and therefore Shieldalloy and TRC does not need to continue to maintain a remediation funding source nor pay the annual 1% surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Administrative Consent Order is thereby terminated. Such written notice shall not relieve Shieldalloy and TRC from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Administrative Consent Order.

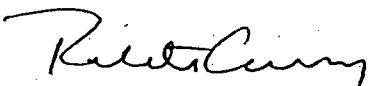
107. Shieldalloy and TRC may assert a claim of confidentiality for any information submitted by Shieldalloy and TRC pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.

108. Shieldalloy and TRC agree to submit to the Department, along with two original copies of the Administrative Consent Order, signed by Shieldalloy and TRC, documentary evidence, such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind Shieldalloy and TRC to the terms of this Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

109. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and Shieldalloy and TRC.

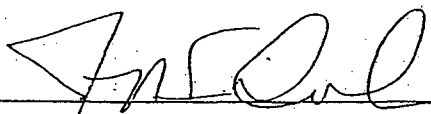
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: 2/1/06

BY:   
Ronald T. Corcoran, Assistant Director  
Oversight Resources Allocation Element

SHIELDALLOY METALLURGICAL CORPORATION

Date 2/1/06

BY:   
Signature  
Joseph S. Diegel  
Print Full Name Signed Above  
Vice-President  
Title

TRC Companies, INC.

Date 2/1/06

BY:

M H Dodd  
Signature

Martin H. Dodd  
Print Full Name Signed Above

Senior Vice President  
Title